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SB 1311 and SB 1334 RELATING TO ZONING

Statement for
Senate Committee on
Intergovernmental Relations
Public Hearing, 2 March 1979

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Both SB 1311 and SB 1334 would amend HRS 46, the Chapter containing general provisions applicable to counties, to add a new section providing for an alternative to the present means for changing land zoning.

The present means for making changes in county zoning involves introduction of a bill in the County Council, its passage by the Council, and approval by the Mayor, or in the case of his veto, its passage by the Council over the veto. The alternative means proposed in both SB 1311 and SB 1334 involves public initiative and a public referendum. One bill uses the term initiative, the other the term referendum. Otherwise the proposed provisions in the two bills appear identical. Hence, we are discussing the two bills in a single statement. The statement does not reflect an institutional position of the University.

It is proposed in the bills that a zoning change may be initiated by petition of at least 35 percent of the registered voters of the county, and enacted by a majority of those voting in the next general election. The mayor would be unable to veto a zoning ordinance amended by this means.

Safeguards would be provided not only in the magnitude of the petition-signing requirement and the county wide election, but in the form of proper titling and summarization of the purpose of the initiative measure on the petition, affidavits of petition circulators as to the identity of the signers as registered voters, etc.

The bills also contain certain provisions relating to potential conflicts between zoning amendments resulting from the proposed alternative process and those resulting from the present normal practice. If, after an initiative petition is filed, a bill for a contrary amendment is introduced in the county council and passed before the initiative referendum measure is voted on, the contrary amendment is in force until the election, but void after the election if the initiative measure passes.

A referendum zoning mechanism was ruled constitutional in the recent Eastlake decision in Ohio, and it would be instructive to compare the Eastlake mechanism with that proposed in these bills.

At least one possible legal problem suggests itself. What would happen if, after an initiative petition were filed, a contrary measure were passed by the County Council and, before a general election, several building permits were also approved under the contrary measure that would be unlawful under the initiative measure. Would the holders of the permits have had a right taken from them? Might it be wise to provide that no amending ordinance contrary to an initiative measure petitioned could take effect until the initiative measure had been disposed of by general election?